DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 40 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The purpose of this amendment is to clarify the period of time that a license is valid after the fee is paid. The amendment was previously published as proposed rulemaking on February 23, 2007 at 54 DCR 1668. No comments were received; no changes were made. These final rules will be effective upon publication of this notice in the *D.C. Register.*

Chapter 40 of Title 17 DCMR is amended as follows:

Section 4006.1 is amended to read as follows:

4006.1 The term of a license, certificate, or registration issued or renewed pursuant to this subtitle shall be two (2) years or for the balance of the license period, whichever is shorter.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 72 of Title 17 of the District of Columbia Municipal Regulations (DCMR). No comments were received. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the *D.C. Register* on June 29, 2007, at 54 DCR 006465. These final rules will be effective upon publication of this notice in the *Register*.

Chapter 72 (Recreation Therapy) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended to read as follows:

Sections 7200.1 is amended to read as follows:

7200.1 This chapter applies to applicants and holders of a registration to practice recreation therapy. This chapter applies only to persons practicing under the title Recreation Therapist or Certified Therapeutic Recreation Specialist. This chapter is not applicable to Activity Therapists, Activity Professionals, Activity Aides, Leisure Professionals, Recreation Professionals, or Recreation Aides as long as they do not hold themselves out to the public as a Recreation Therapist or Certified Therapeutic Recreation Specialist as defined by § 7203.2.

Section 7200.4 is amended to read as follows:

7200.4 The term "Board" as found in Chapters 40 and 41 of this title shall in all instances refer to the Director of the Department of Health. The Director shall possess all powers and assume all functions assigned to a "Board" under these administrative procedures, as well as the powers and functions retained by the Director.

Section 7202.1 is amended to read as follows:

7202.1 An applicant for registration to practice as a recreation therapist may meet the education, training, and experience requirements by furnishing to the Director satisfactory proof that the applicant has been certified by the National Council for Therapeutic Recreation Certification (NCTRC) at the professional level of Certified Therapeutic Recreation Specialist.

The heading for section 7203 is amended to read as follows:

7203 SCOPE OF PRACTICE OF REGISTERED RECREATION THERAPIST OR CERTIFIED THERAPEUTIC RECREATION

Section 7203.3 is amended to read as follows:

7203.3 The practice of recreation therapy shall include the following:

(a) All direct patient or client services of assessment;

(b) Planning;

(c) Design;

(d) Implementation;

(e) Evaluation;

(f) Documentation of specific interventions;

(g) Management;

(h) Consultation;

(i) Research; and

(j) Education for either individuals or groups that require specific therapeutic recreation or recreation therapy intervention with such services being provided for recreation resources and opportunities to improve health and well being.

Section 7204 is amended in its entirety to read as follows:

7204 LAWFUL PRACTICE

7204.1 Any person who practices or offers to practice recreation therapy in the District of Columbia as defined by § 7203.2 shall be registered pursuant to these rules. Current certification shall be maintained with the NCTRC.

7204.2 A certified therapeutic recreation specialist registered to practice in the District of Columbia shall adhere to the Code of Ethics established by the American Therapeutic Recreation Association as they may be amended from time to time.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 75 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The purpose of these amendments is to clarify educational, licensure, and training requirements, to define the scope of the practice of massage therapy, and to expand the standards of practice. These regulations were previously published on January 12, 2007 at 54 DCR 276. In response to the publication, numerous comments were received resulting in changes to sections 7504.1, 7510.1, 7511.3, 7514.1, 7516.2, and 7599.1. The regulations were published again on July 20, 2007 for a 30-day comment period. No comments were received; no changes were made. These final rules will be effective upon publication of this notice in the *D.C. Register.*

Chapter 75 (Massage Therapy) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 7502 is deleted in its entirety and amended to read as follows:

7502 EDUCATIONAL REQUIREMENTS

7502.1 Except as otherwise provided in this chapter, an applicant shall furnish proof satisfactory to the Board that the applicant has successfully completed an educational program in the practice of massage therapy at an institution or institutions licensed by the District of Columbia Educational Licensing Commission or, in the discretion of the Board, by the educational licensing authority of another state, at the time the applicant graduated. In addition, said institution(s) shall be approved or accredited by the Commission on Massage Therapy Accreditation/Approval or shall have equivalent standards as determined by the Board; or said institution(s) shall be accredited by the Accreditation Council for Continuing Education and Training, the Accrediting Commission of Career Schools and Colleges of Technology, another accreditation agency approved by the United States Department of Education, or a regional body for post secondary education, at the time the applicant graduated, in accordance with § 504(d-1) of the Act (D.C. Official Code § 3-1205.04(d-1)).

7502.2 An applicant for a license to practice massage therapy shall establish, to the satisfaction of the Board, that he or she has successfully completed a minimum of five hundred (500) hours of in-class training. At least three (3) of the hours shall be in professional ethics.

7502.3 An applicant who applies for a license to practice as a massage therapist more than two (2) years after completing the educational and examination requirements shall submit proof, to the satisfaction of the Board, of having completed fifty (50) hours of clinical training under the charge of a supervisor, of which at least twenty-five (25) hours shall be client contact hours within the four (4) months prior to the date the application is submitted.

7502.4 Of the minimum 500 hours of in-class training required by § 7502.2, a minimum of 100 hours shall consist of anatomy, physiology, and kinesiology. The remaining 400 hours shall include a majority of hours in massage therapy theory and practice, as well as discretionary related course work, including but not limited to professional ethics, business practices, health and hygiene, contraindications of massage, cardiopulmonary resuscitation (CPR), and first aid.

7502.5 The in-class training hours required by § 7502.2 shall be accumulated in programs not less than six (6) months total duration.

7502.6 An applicant may attend more than one (1) training institution, provided he or she graduates from a school requiring a minimum of five hundred (500) in-class hours.

7502.7 Credits earned from a college or university shall be converted by the federal government conversion rate, which grants thirty-seven (37) clock hours for each one (1) credit hour. One (1) classroom hour shall be defined as no less than fifty (50) minutes of any one (1) clock hour. The Board shall not recognize correspondence and on-line courses.

7502.8 An applicant shall submit the following as part of a completed application form:

(a) An official certified transcript of the applicant's successful completion of the required in-class training;

(b) A certificate of graduation from an approved school;

(c) Certification, pursuant to § 7504.2, of the applicant's passing the required approved examination; and

(d) Current certification in both CPR and first aid.

7502.9 The Board may issue a list of approved schools and training programs.

Section 7504.1 is amended to read as follows:

7504.1 To qualify for a license by examination, an applicant shall receive a passing score on the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) or another examination which is certified by the National Commission of Certifying Agencies (NCCA) or the Federation of State Massage Therapy Boards (FSMTB) and approved at the discretion of the Board.

Section 7506.1 is amended to read as follows:

7506.1 Subject to § 7506.2, this section shall apply to renewal, reactivation, or reinstatement of a license for a term beginning February 1, 2009, and for subsequent terms thereafter.

Section 7506.4 is amended to read as follows:

7506.4 An applicant for renewal, reactivation, or reinstatement of a license shall submit proof pursuant to § 7506.7 of having completed twelve (12) hours of approved continuing education credit during the two (2) year period preceding the date the license expires which shall consist of the following:

(a) Three (3) hours of professional ethics; and

(b) Nine (9) hours of massage-related course work provided by a Board approved provider of which six (6) hours shall be completed in a live classroom setting taught by an appropriate instructor.

Section 7506.6 is amended to read as follows:

7506.6 To qualify for reinstatement of a license to practice massage therapy, an applicant shall submit proof pursuant to § 7506.7 of having completed the following:

(a) Six (6) hours of approved continuing education credit for each year that the license was expired with at least three (3) hours completed in a live classroom setting taught by an appropriate instructor with an emphasis on manual techniques; and

(b) Three (3) hours of professional ethics.

A new section 7506.12 is added to read as follows:

7506.12 The Board shall periodically conduct a random audit of at least five percent (5%) of its active licensees to determine continuing education compliance. Any licensee selected for the audit shall return the completed continuing education compliance audit form and all supporting documentation to the Board within thirty (30) days of receiving notification of the audit. Failure to comply with the continuing education requirements may subject the licensee to disciplinary action by the Board.

Section 7507.3 is amended to read as follows:

7507.3 To qualify for approval by the Board, a continuing education program shall do the following:

(a) Be current in its subject matter;

(b) Be developed and taught by qualified individuals; and

(c) Meet one (1) of the following requirements:

(1) Be administered or approved by a recognized national, state, or local massage therapy organization, NCBTMB, health care organization, accredited health care facility, or an accredited college or university; or

(2) Be submitted by the program sponsors to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board.

A new section 7510 is added to read as follows:

7510 SCOPE OF PRACTICE

7510.1 A massage therapist or any person so authorized under the Act to perform massage therapy may perform therapeutic maneuvers in which the practitioner applies massage techniques, including use of the hand or limb, by applying touch and pressure to the human body. Such techniques include, but are not limited to the following:

(a) Stroking, (including but not limited to Effluerage);

(b) Kneading, (including but not limited to Petrissage);

(c) Tapping, (including but not limited to Tapotement);

(d) Flexibility training, (including but not limited to stretching, strengthening, and manual traction);

(e) Compression;

(f) Vibration;

(g) Friction;

(h) Application of heat, cold, and water;

(i) Non-prescription drug applications, (including mild abrasives) for the purpose of improving circulation, enhancing muscle relaxation, relieving muscle pain, reducing stress, or promotion health; or

(j) Holding, positioning, or causing movement of an individual's body.

7510.2 Massage therapy does not include incidental use of soft tissue manipulation while primarily engaging in another technique or modality in which a practitioner is qualified.

Section 7511.3 is amended to read as follows:

7511.3 Students and applicants shall adhere to the following:

(a) A student shall practice massage therapy only under the charge of a supervisor; and

(b) An applicant may practice massage therapy prior to licensure for 90 days under the charge of a supervisor.

A new section 7512 is added to read as follows:

7512 CARDIAC PULMONARY RESUSCITATION AND FIRST AID REQUIREMENTS

7512.1 This section shall apply to renewal, reactivation, or reinstatement of a license for a term beginning February 1, 2009, and for subsequent terms thereafter.

7512.2 An applicant for renewal, reactivation, or reinstatement of a license shall submit to the Board with the renewal, reactivation, or reinstatement application copies of certificates indicating CPR and first-aid

certification valid at the date of renewal, reactivation, or reinstatement. Such certification shall not be used to satisfy continuing education requirements.

Section 7514.1 is amended to read as follows:

7514.1 A licensed massage therapist shall do the following:

(a) Perform only those services for which the massage therapist is qualified and shall not represent his or her skills, training, scope of practice, certifications, professional affiliations, and other qualifications in a manner which is false or misleading;

(b) Work to eliminate prejudices in the profession and not unjustly discriminate against clients or colleagues;

(c) Abide by all health occupations laws that apply to the practice of massage therapy;

(d) Protect the client's right to privacy by not divulging confidential information unless disclosure is with the consent of the client or the client's guardian, or is, in the judgment of the massage therapist, needed to protect the client or the community, or is otherwise required by law;

(e) Conduct business and professional activities with honesty and integrity and project a professional image in all aspects of his or her practice;

(f) Respect the integrity of each person and, therefore, shall not engage in any sexual activity with clients or individuals who have been clients within the previous twelve (12) months, nor engage in any activities with the intent of sexually arousing clients;

(g) Provide information about fees upon request by the client;

(h) Promptly report any information of illegal, unethical, or unsafe practice of massage therapy to the Board;

(i) Use professional verbal, nonverbal, and written communications;

(j) Provide an environment that is safe and comfortable for the client and which, at a minimum, meets all legal requirements for health and safety;

(k) Use standard precautions to insure professional hygienic practices and maintain a level of personal hygiene appropriate for practitioners in the therapeutic setting;

(l) Wear clothing that is clean, modest, and professional;

(m) Obtain voluntary and informed consent from the client or the client's guardian prior to initiating the session;

(n) If applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed;

(o) Use appropriate draping to protect the client's physical and emotional privacy;

(p) Refer to other professionals when in the best interest of the client or practitioner;

(q) Seek other professional advice when needed;

(r) Respect the traditions and practices of other professionals and foster collegial relationships;

(s) Refrain from impugning the reputation of any colleague;

(t) Protect the interests of clients who are minors or who are unable to give voluntary consent by securing permission from an appropriate third-party or guardian;

(u) Solicit only information that is relevant to the professional client therapist relationship;

(v) Maintain client files for a minimum of three (3) years past the date of last contact for an adult and, for a minor, a minimum of three (3) years after the minor reaches the age of majority;

(w) Store and dispose of client files in a secure manner;

(x) Maintain adequate and customary liability insurance;

(y) Advertise in a manner that is not misleading to the public by, among other things, the use of sensational, sexual, or provocative language or pictures to promote business;

(z) Display or discuss schedule of fees in advance of the session so as to be clearly understood by the client or potential client;

(aa) Recognize his or her influential position with the client and not exploit the relationship for personal or other gain;

(bb) Respect the client's right to refuse the therapeutic session;

(cc) Refrain from practicing under the influence of alcohol, drugs, or any illegal substances, with the exception of prescribed dosages of prescription medication that do not significantly impair the therapist; and

(dd) Have the right to refuse or terminate the service provided to a client who is abusive or under the influence of alcohol, drugs, or any illegal substance.

A new section 7515 is added to read as follows:

7515 SUPERVISED PRACTICE FORM

7515.1 A supervised practice form shall be submitted two (2) weeks prior to commencement of supervised practice. A supervised practice form may only be issued to an applicant one (1) time. An applicant may practice massage therapy while working under a supervised practice form for no more than ninety (90) days, and may practice at multiple locations at the discretion of the supervisor(s).

7515.2 A supervisor may supervise no more than three (3) applicants at any one time.

A new section 7516 is added to read as follows:

7516 TUBERCULIN TEST REQUIRED

7516.1 This section shall apply to renewal, reactivation, or reinstatement of a license for a term beginning February 1, 2009, and for subsequent terms thereafter.

7516.2 An applicant for an initial, renewal, or reinstatement of a license shall provide to the Board proof that the applicant has had an intradermal tuberculin test, or chest x-ray to detect the presence of tuberculosis, performed within the twelve (12) months prior to submission of the application. The applicant shall not be required to forward the results of the test to the Board.

Section 7599.1 is amended to read as follows:

7599.1 As used in this chapter, the following terms shall have the meanings ascribed:

Act means the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C Official Code § 3-1201.01 *et seq.*).

Applicant means a person applying for a license to practice massage therapy under this chapter.

Approved School means any institution or training program which meets the requirements of § 7502.1.

Board means the Board of Massage Therapy, established by § 215(a) of the Act (D.C. Official Code § 3-1203.15(a)).

Full time means working at least 37.5 hours per week. Client contact while performing massage therapy must comprise at least sixteen (16) of those 37.5 hours.

Incidental use means soft tissue manipulation performed as part of movement re-education, energy healing, or other modality in which the soft tissue manipulation is not the central aim of the treatment, but is performed occasionally to facilitate the non-massage therapy practice.

Massage techniques means any touching or pressure with the intent of providing healing or therapeutic benefits through soft tissue manipulation. Massage techniques include, but are not limited to, Rolfing, Neuromuscular Therapy, Shiatsu or acupressure, Trigger Point massage, Trager, Tui na, Reflexology, Thai Massage, deep tissue massage, Myofascial Release, Lymphatic Drainage, Craniosacral, Polarity, Reiki, Swedish Massage, and Therapeutic Touch. Massage techniques may be performed in any postural position including seated massage and techniques performed on clothed clients.

Massage therapist means a person licensed to practice massage therapy under the Act.

Sexual activity means any direct or indirect physical contact or connection by any person, or between persons, which is intended to erotically stimulate either or both persons or which is likely to cause such stimulation. As used herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation occurs.

Substantially full time means working at least twenty-eight (28) hours per week. Client contact while performing massage therapy must comprise at least twelve (12) of those 28 hours.

Supervision means oversight by a supervisor who is available on the premises or by vocal communication, either directly or by a communications device, and within one (1) hour of travel time of the supervisee.

Supervisor means a massage therapist who is licensed under the Act and in good standing in the District of Columbia, who assumes legal, ethical, and professional responsibility for the conduct of a student or applicant performing massage therapy under his or her charge.

Therapeutic means having a positive affect on the health and well-being of the client.

Training means in-class instruction from an approved institution pursuant to § 7502.1. Apprenticeships, internships, correspondence courses or any other out-of-class experience are not considered training, but are considered experience.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-21A
Z.C. Case No. 05-21A
(Pet Grooming, Pet Shops, Veterinary Hospitals, and Animal Shelters – Text Amendment)
January 8, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of adoption of the following amendments to § 199 (Definitions), § 602 (Prohibited Uses (CR)), § 721 (Uses as a Matter-of-Right (C-2)), § 735 (Animal Boarding), § 801 (Uses as a Matter-of-Right (C-M)), § 802 (Special Exceptions (C-M)), § 902 (Prohibited Uses (W)), § 2101 (Schedule of Requirements for Parking Spaces), and § 3104 (Special Exceptions), and of the addition of new § 736 (Pet Grooming Establishment), new § 737 (Pet Shop), new § 738 (Veterinary Boarding Hospital), new § 739 (Animal Shelter), and new §§ 822.20-822-22 (Special Exception). The amendments permit pet grooming, pet shop, veterinary boarding hospital, and animal shelter uses as special exceptions, subject to specific requirements within the C-2 through C-4 Zone Districts and in the industrial zones. The amendments also permit animal shelters as a special exception in the C-2 through C-4 Zone Districts and as a matter-of-right use the industrial zone districts subject to specific requirements.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 17, 2006, at 53 DCR 9297, for a 30-day notice and comment period. No comments were received.

The Commission took final action to adopt the amendments at a public meeting held on January 8, 2007. No changes were made to the text published in the Notice of Proposed Rulemaking, but minor changes were made to the numbering to accommodate changes made to the regulations while this case was pending.

This final rulemaking is effective upon its publication in the *D.C. Register*.

Existing Regulations

Pet grooming facilities, animal shelters, and veterinary boarding hospitals are not currently permitted in any zone district, either as a matter-of-right or by special exception. Pet shops and

veterinary hospitals are permitted as a matter-of-right within the C-2, C-3, C-4, C-M, and M Zone Districts, although there is a lack of consistency in the use of these terms. Veterinary hospitals are prohibited within the CR and W Zone Districts.

Description of Text Amendment

The text amendments maintain veterinary hospital as a use permitted as a matter-of-right within the C-2, C-3, C-4, C-M and M Zone Districts and add that a veterinary hospital "may also include the incidental boarding of animals as necessary for convalescence, pet grooming, and the sale of pet supplies, but not as an independent line of business."

Animal shelter is added as a use permitted as a matter-of-right within the C-M and M Zone Districts, subject to enumerated conditions. Animal shelter is added as a special exception use within the C-2, C-3, and C-4 Zone Districts, if approved by the Board of Zoning Adjustment ("BZA"), subject to enumerated criteria.

Pet grooming, pet shop, and veterinary boarding hospital are added as special exception uses within the C-2, C-3, C-4, C-M and M Zone Districts, if approved by the BZA, subject to enumerated criteria. A veterinary boarding hospital is defined as a veterinary hospital that boards animals as an independent line of business.

This rulemaking also defines the terms "animal shelter," "pet grooming establishment," "pet shop," "veterinary boarding hospital," and "veterinary hospital."

Relationship to the Comprehensive Plan

The proposed text amendments will implement the themes, goals, objectives, and policies, of the Comprehensive Plan, including § 102 improving neighborhoods, and § 406, environmental protection.

Section 102.2 of the Comprehensive Plan recommends controlling the physical qualities that make neighborhoods desirable places to live to ensure that the character of these neighborhoods is maintained and improved. The addition of matter-of-right and special exception requirements for animal-related uses will help to control the potential for adverse impacts that can result from those uses and thereby maintain the desirable character of neighborhoods.

Section 406 of the Comprehensive Plan recommends promoting public health and sanitation through the enactment and enforcement of regulations regarding, among other things, the disposal of harmful biological materials and noise abatement. Section 406.2 establishes the policies of implementing programs to manage the handling, storage, and disposal of harmful biological materials and to minimize perpetual sources of noise. The addition of matter-of-right and special exception conditions will regulate the handling, storage, and disposal of animal wastes and odors and will control the noise associated with the specified uses.

Set Down Proceeding

The Commission initiated this rulemaking in response to a petition from the Office of Planning ("OP") requesting that the Commission regulate certain animal-related uses that could adversely affect surrounding neighborhoods because of noise, odor, and animal waste.

The Commission invited OP to file the petition after conducting hearings for a companion case, Zoning Commission Case No. 05-21, whereby the Commission adopted rules regulating animal boarding facilities. After the hearings, the Commission was concerned that other animal-related businesses have similar potential adverse impacts and deserved similar regulatory treatment.

The Commission set down the requested text amendments for a public hearing at its meeting of January 9, 2006.

Public Hearing

On June 29, 2006, the Commission held a public hearing on the proposed text amendment.

The Washington Humane Society testified in support of permitting an animal shelter as a matter-of-right use within the C-M and M Zone Districts and suggested reducing the 1,000-foot distance required between outdoor runs and residential uses or residence zone districts in the rule as advertised to 200 feet. They indicated that adopting a 1,000-foot requirement would eliminate the possibility of them finding a new location within the District.

Members of the District of Columbia Veterinary Medical Association testified in opposition to making veterinary hospitals special exception uses within the C-2, C-3, and C-4 Zone Districts. They indicated that pets come from people's homes and not office buildings and, therefore, veterinary hospitals need to be close to the residents they serve.

Residents of Q Street, N.W. testified in support of regulations to govern pet grooming, veterinarians, pet shops, and animal shelters as special exception uses within the C-2, C-3, and C-4 Zone Districts. However, they support veterinary hospitals as a matter-of-right use within the C-2, C-3, and C-4 Zone Districts, but subject to restrictions to control waste, odor, and noise. They testified against permitting exterior runs associated with animal shelters to be located within 200 feet of residential uses or residence zone districts.

The record was left open until July 31, 2006 to allow for additional submissions from the community.

The Washington Humane Society and the Q Street Neighborhood Association wrote a combined submission expressing support for outdoor runs and yards at animal shelters in industrial zones, so long as neighboring properties were adequately protected from noise and outdoor areas were

not allowed in commercial zones. Their comment also suggested that in commercial zone districts, animal shelters should be special exception uses and should not have outdoor runs or yards. In industrial zone districts, they suggested animal shelters should be a matter-of-right use, and outdoor runs and yards should be permitted.

Several District veterinarians and the American Veterinary Medical Association expressed their opposition to the special exception requirement for veterinary hospitals.

OP submitted supplemental reports on August 10 and September 7, 2006. The supplemental reports summarized the comments made at the hearing and recommended certain changes to the text to address the issues raised by the Commission and the community.

OP suggested adding a definition for a veterinary boarding hospital as a veterinary hospital, that utilizes fifty percent or more of its floor area for the boarding of animals, and text that would permit veterinary boarding hospitals as a special exception use within the C-2, C-3, C-4, C-M, and M Zone Districts, if approved by the BZA, subject to specified criteria. OP also suggested permitting animal shelters as a matter-of-right in industrial zones, subject to specified conditions, and permitting outdoor runs and yards at animal shelters subject to several conditions, including that the run or yard be at least 200 feet from a residential zone or residential use.

Proposed Action

At the September 11, 2006 meeting, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the text recommended by OP in its second supplemental report dated September 7, 2006.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 17, 2006, at 53 DCR 9297, for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated September 28, 2006, found that the proposed text amendments, to add definitions and regulations for pet grooming establishments, pet shops, veterinary boarding hospitals, veterinary hospitals, and animal shelters as special exception uses within the C-2, C-3, C-4, C-M, and M Zone Districts, subject to special exception review, would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on January 8, 2007.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby APPROVES the following amendments to the Zoning Regulations (Title 11 DCMR). Title 11 DCMR is amended as follows (deletions shown in ~~strikethrough~~, additions shown in **bold and underline**):

A. Chapter 1, THE ZONING REGULATIONS, § 199.1, is amended by adding the following new definitions:

Animal shelter - Any premises that houses and feeds stray or abandoned animals without a fee and is operated by a non-profit organization or governmental agency.

Pet grooming establishment - An establishment that, for a fee, trims or cleans domestic pets, such as dogs and cats. A pet grooming establishment is considered an animal boarding use if more than ten animals are on the premises at a time or the overnight stay of animals is permitted.

Pet shop - A store for the sale of dogs, cats, birds, tropical fish, and/or other domesticated pets, to the extent permitted by D.C. Official Code § 8-1808(h)(1), and related supplies and equipment.

Veterinary boarding hospital - A veterinary hospital that boards animals as an independent line of business.

Veterinary hospital - An establishment used by a licensed veterinarian for the practice of veterinary medicine and not as an animal boarding establishment.

B. Chapter 6, MIXED USE DISTRICTS, § 602.1 (a) is amended to read as follows:

602.1 The following uses shall be specifically prohibited in CR Districts:

(a) **Veterinary** ~~Animal~~ hospital ~~or veterinarian~~;

C. Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

1. Section 721, Uses as a Matter of Right C-2, is amended as follows:

   a. By amending 721.2 (x) to read as follows:

      (x) Veterinary hospital, **which may also include the incidental boarding of animals as necessary for convalescence, pet grooming, and the sale of pet supplies, but not as an independent line of business**.

   b. By striking subparagraph 721.3 (p).

2. Subsections 735 and 736 are amended by:

   a. Re-designating the existing text of 736 as §§ 735.6 and 735.7. to read as follows:

      735.6 External yards or other exterior facilities for the keeping of animals shall not be permitted.

      735.7 Notwithstanding § ~~736.1~~ 735.6, an animal boarding use existing on July 11, 2005, under a Certificate of Occupancy for a "Dog Care Center" or "Dog Day Care Center," may continue the use of an external yard for the keeping of dogs if approved by the Board of Zoning Adjustment pursuant to § 3104 and the requirements of this section.

         (a) The yard shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, and/or waste.

         (b) The applicant shall demonstrate that the external yard will be fenced off for the safe confinement of the animals.

         (c) The applicant shall demonstrate that the external yard is located entirely on private property.

         (d) The Board shall establish the hours in which animals may be kept in the yard, provided that no animals shall be permitted in the yard between the hours of 8:00 p.m. and 7:00 a.m.

3. By re-codifying § 736 to read as follows:

736 ~~ANIMAL BOARDING: EXTERNAL YARDS~~ **PET GROOMING ESTABLISHMENT**

736.1 **A pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.**

736.2 **The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.**

736.3 **All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.**

736.4 **The pet grooming establishment shall not abut an existing residential use or Residence District.**

736.5 **External yards or other external facilities for the keeping of animals shall not be permitted.**

736.6 **The sale of pet supplies is permitted as an accessory use.**

736.7 **The Board may impose additional requirements as it deems necessary to protect nearby properties.**

4. By adding new §§ 737 through 739 to read as follows:

737 **PET SHOP**

737.1 **A pet shop may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.**

737.2 **The pet shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.**

737.3 The pet shop shall not abut an existing residential use or a Residence District.

737.4 External yards or other external facilities for the keeping of animals shall not be permitted.

737.5 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

738 VETERINARY BOARDING HOSPITAL

738.1 A veterinary boarding hospital may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.

738.2 A veterinary boarding hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808 (h)(1), except domesticated dogs.

738.3 No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals.

738.4 The veterinary boarding hospital shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

738.5 The veterinary boarding hospital shall not abut an existing residential use or a Residence District.

738.6 External yards or other external facilities for the keeping of animals shall not be permitted.

738.7 Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses.

738.8 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

739 ANIMAL SHELTER

739.1 An animal shelter may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.

739.2 The animal shelter shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

739.3 The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping.

739.4 All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.

739.5 The animal shelter shall not abut an existing residential use or a Residence District.

739.6 External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District.

739.7 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

D. Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows:

1. By adding new § 801.7 (p) to read as follows:

(p) An animal shelter shall be permitted as a matter of right subject to the following standards:

(i) The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping;

(ii) Animal shelters shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system;

(iii) Animal shelters shall not abut an existing residential use or a Residence District; and

(iv) Outdoor runs and external yards for the exercise of animals shall be permitted, subject to the following requirements:

(A) No animals shall be permitted in outdoor runs or external yards between the hours of 8:00 p.m. and 8:00 a.m.;

(B) External yards and outdoor runs shall be enclosed with fencing or walls for the safe confinement of the animals and the absorption of noise. Fencing and/or walls shall be a minimum of eight (8) feet in height and constructed of solid or opaque materials with maximal noise-absorbing characteristics;

(C) No more than three (3) animals shall be permitted within any exterior yard or outdoor run at a time; and

(D) No part shall be located within two hundred (200) feet of an existing residential use or Residence District.

2. By adding new §§ 802.25 through 802.28 to read as follows:

802.25 A pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;

(b) All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor

shall be controlled by means of an air filtration system or an equivalently effective odor control system;

(c) The pet grooming establishment shall not abut an existing residential use or a Residence District;

(d) External yards or other external facilities for the keeping of animals shall not be permitted;

(e) The sale of pet supplies is permitted as an accessory use; and

(f) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

802.26 A pet shop may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) The pet shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;

(b) The pet shop shall not abut an existing residential use or a Residence District;

(c) External yards or other external facilities for the keeping of animals shall not be permitted; and

(d) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

802.27 A veterinary boarding hospital may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) A veterinary boarding hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808 (h)(1), except domesticated dogs;

(b) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;

(c) The veterinary boarding hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;

(d) The veterinary boarding hospital shall not abut an existing residential use or a Residence District;

(e) External yards or other external facilities for the keeping of animals shall not be permitted;

(f) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and

(g) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

3. By adding new §§ 822.20 through 822.22 to read as follows:

822.20 A pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;

(b) All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system;

(c) The pet grooming establishment shall not abut an existing residential use or a Residence District;

(d) External yards or other external facilities for the keeping of animals shall not be permitted;

(e) The sale of pet supplies is permitted as an accessory use; and

(f) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

822.21 A pet shop may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) The pet shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;

(b) The pet shop shall not abut an existing residential use or a Residence District;

(c) External yards or other external facilities for the keeping of animals shall not be permitted; and

(d) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

822.22 A veterinary boarding hospital may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.

(a) A veterinary boarding hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808 (h)(1), except domesticated dogs;

(b) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;

(c) The veterinary boarding hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;

(d) The veterinary boarding hospital shall not abut an existing residential use or a Residence District;

(e) External yards or other external facilities for the keeping of animals shall not be permitted;

(f) **Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and**

(g) **The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.**

E. Chapter 9, WATERFRONT DISTRICTS, § 902.1(a) is amended to read as follows:

902.1 The following uses are prohibited in Waterfront Districts:

(a) **Veterinary** ~~Animal~~ hospital ~~or veterinarian~~;

F. The table included in § 2101.1, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES is amended by striking the use "Office- Medical and dental, clinic, veterinary doctor-or veterinary hospital" and inserting the use "Office- Medical and dental, clinic, or veterinary hospital" in its place.

G. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by adding to the table of special exceptions in § 3104.1, in the proper alphabetical order, the following new entries:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Animal shelter	**Any C-2, C-3, or C-4 District**	**§ 739**
Pet grooming establishment	**Any C-2, C-3, C-4, C-M, or M District**	**§§ 736, 802.25, and 822.20**
Pet shop	**Any C-2, C-3, C-4, C-M, or M District**	**§§ 737, 802.26, and 822.21**
Veterinary boarding hospital	**Any C-2, C-3, C-4, C-M, or M District**	**§§ 738, 802.27, and 822.22**

Vote of the Zoning Commission taken at its public meeting on September 11, 2006, to **APPROVE** the proposed rulemaking by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on January 8, 2007, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on SEP 14 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-21A
Z.C. Case No. 05-21A
(Pet Grooming, Pet Shops, Veterinary Hospitals & Animal Shelters – Text Amendment)
January 8, 2007

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-33
Z.C. Case No. 06-33
(Text Amendments – 11 DCMR)
(Parking for Historic Resources)
July 9, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing and referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapter 21 of the Zoning Regulations (Title 11 DCMR). The proposed amendments clarify parking requirements for historic landmarks and buildings found to be contributing to an historic district ("historic resources"). The Commission took final action to adopt the amendments at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

Although the current regulations clearly exempt historic resources from having to provide additional on-site parking due to a change of use for which more parking is required, it is unclear whether this exemption also applies when more parking is required as a result of the physical expansion of the structure. The text amendments are necessary to remove this ambiguity.

Description of Text Amendments

This rulemaking was initiated by the Office of Planning ("OP"). The text amendments set clear standards for when parking requirements apply to additions to historic resources and when they do not. The amendments only require additional parking when an increase in gross floor area would require the provision of four or more parking spaces. Even when that is the case, the amendments provide for special exception relief.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ HP-2.4.1 through 2.4.5, which advocate appropriate adaptation and rehabilitation of historic structures through compatible development. The text amendments promote these goals of historically-sensitive rehabilitation by providing clear relief from aspects of the parking regulations.

Public Hearing and Proposed Action

The Commission held a public hearing on November 27, 2006 and took proposed action on April 9, 2007 to approve the advertised text, except for some minor changes in language and numbering suggested by the Office of the Attorney General ("OAG"). A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 11, 2007, at 54 *DCR* 4508, for a 30-day notice and comment period. Two comment letters were received, one from the law firm of Pillsbury, Winthrop, Shaw, Pittman and the other from the law firm of Holland & Knight.

Both comment letters suggested that the proposed changes are not necessary and should not be adopted. Both went on to provide alternative language for the Commission to consider if the text amendments were pursued. Both strongly recommended allowing mechanical parking structures to meet parking requirements for historic resources. They suggested expanding the conditions under which parking requirements are waived to include lack of access to curb cuts and vertical-only additions. They also recommended raising the minimum threshold number of parking spaces to greater than four.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

OAG has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007, including one non-substantive change made to the wording of new § 2120.3. The change was made at the suggestion of OAG to improve the clarity of the provision. In response to the two comments received, the Commission continues to believe that the current regulations are not sufficiently clear and that the proposed text provides needed protection of historic resources and sufficient relief for extenuating circumstances. The Commission notes that OP intends to examine the use of mechanized parking structures and, if appropriate, will address the subject in a future text amendment.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underline, and deleted wording is shown in ~~strikethrough~~ lettering, except for Part D, which is all new text and therefore not annotated:

A. Amend § 2100.4 as follows:

2100.4 Except ~~as provided in § 2100.5,~~ **for historic resources as defined in § 2120.2,** when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for that additional requirement in the amount necessary to conform to § 2101.

B. Delete § 2100.5.

C. Amend § 2100.6 as follows:

2100.6 **Except as provided in § 2120.3,** ~~W~~when the intensity of a building or structure existing before May 12, 1958, is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9.

D. Add a new § 2120, "Parking for Historic Buildings," as follows:

2120.1 This section sets forth the circumstances under which existing and new uses in historic resources and additions thereto are exempt from providing parking and shall not apply to new unattached structures constructed on the same lot as a historic resource.

2120.2 For the purposes of this section, a historic resource is a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located.

2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and

from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

(a) The gross floor area of the historic resource is being increased by 50% or more, and

(b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

2120.4 Any parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.

2120.5 Parking spaces provided for a historic resource shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas. All required parking spaces shall be clearly striped and lined. Durable all-weather materials shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

2120.6 The Board of Zoning Adjustment may grant relief from all or part of the parking requirements of this section if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The Board shall grant only the amount of relief needed to alleviate the difficulty proved. The applicant shall also demonstrate compliance with the general special exception standard set forth in § 3104 and shall address each of the following criteria as part of its presentation to the Board:

(a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

(b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;

(c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and

(d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

2120.7 Prior to taking final action on an application, the Board shall refer the application to the D.C. Department of Transportation for review and report.

Vote of the Zoning Commission taken at its public meeting on April 9, 2007, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol Mitten, John G. Parsons, Anthony J. Hood, Michael G. Turnbull, and Gregory Jefferies to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007, by a vote of **3-0-2** (Carol Mitten, Anthony J. Hood, and John G. Parsons to adopt; Michael G. Turnbull and Gregory Jefferies, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on SEP 14 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 06-33
Z.C. Case No. 06-33
(Text Amendments – 11 DCMR)
(Parking for Historic Resources)
July 9, 2007

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-47
Z.C. Case No. 06-47
(Text Amendment – 11 DCMR)
(Minimum Lot Area and Lot Occupancy Requirements for Apartment Houses in the R-4 Zone District)
July 9, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of text amendments to Chapters 3 and 4 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")). The amendments clarify that the number of apartment units in existing apartment houses located in the R-4 Zone District may not be increased unless there are 900 square feet of lot area for each unit (whether new or existing). The amendments also impose a lot occupancy limit for buildings or structures converted to apartment houses in the R-4 Zone District.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007, at 54 *DCR* 5329, for a 30-day notice and comment period.

The Commission took final action to adopt the amendment at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The matter of right provisions for the R-4 District do not permit new apartment houses, but allow "the conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by ... [§] 401.3." (11 DCMR § 330.5.) Subsection 401.3 lists, for each residential zone, lot area requirements by structure type. For the R-4 Zone District, § 401.3 lists separate requirements for row dwellings and flats, single-family semi-detached dwellings, and for a "conversion to apartment house." The lot area requirement for a structure converted to an apartment house is 900 square feet per dwelling unit.

The Board of Zoning Adjustment held in a recent case that the lot occupancy limits of §§ 330.5 and 401.3 do not apply when the number of units in an apartment house existing before May 12, 1958 is increased, because such an increase is not a "conversion to apartment house."

Description of Text Amendment

This rulemaking was initiated by the Office of Planning ("OP"). The text amendment clarifies that the number of apartment units in existing apartment houses located in the R-4 Zone District may not be increased unless there are 900 square feet of lot area for each unit, regardless of whether the apartment is a new conversion or has existed as an apartment building since 1958. It also imposes a lot occupancy limit for buildings or structures converted to apartment houses in the R-4 Zone District. The text amendment amends §§ 330.5(c), 401.3 and 403.2 and adds a new § 401.11 to the Zoning Regulations.

Relationship to Comprehensive Plan

The proposed text amendment is fully consistent with the Comprehensive Plan, which supports protecting existing row house neighborhoods.

Public Hearing and Proposed Action

The Commission held a public hearing on the case on April 4, 2007. Lindsley Williams testified at the hearing, offering comments and recommendations to the proposed text, and submitted his comments by letter dated April 19, 2007. The Commission requested that OP respond to his comments in a supplemental filing.

Mr. Williams proposed:

- Inclusion of a special exception provision to provide a range of 600-899 square feet of lot area per unit (not to exceed a lot occupancy of 70%) to avoid the burden of a variance in the R-4 Zone District, which would be next to impossible to pursue because the circumstances would not be unique;
- Inclusion of apartment houses existing prior to May 12, 1958 as conforming matter-of-right uses in the R-4 District, with increases to the floor area limited by §§ 401.3 and 403.2 ;
- A more general examination of the conversion of structures existing prior to May 12, 1958 to apartment houses in all Zone Districts.

OP responded through a supplemental report dated April 20, 2007. OP's report stated that the recommendations undermined the intent of the proposed text amendment -- stabilizing the row house and single-family aspects of the R-4 District's character. OP further contended that the

current Zoning Regulations and proposed amendments provided adequate control over the conversions of structures existing prior to May 12, 1958 such that a more general examination of the regulations was not necessary.

The Commission took proposed action to adopt the amendments as originally advertised at its regularly scheduled public meeting on May 14, 2007. The Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007 at 54 *DCR* 5329 for a 30-day notice and comment period. The Commission received comments from ANC 6A and ANC 1B in support of the amendments.

The proposed rulemaking was referred to NCPC under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, determined that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007. No changes were made to the text published in the Notice of Proposed Rulemaking.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations and the Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR. New text is shown in **bold** and underline and deleted text is shown in ~~strikethrough~~ text:

A. Chapter 3 (R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS), § 330.5(c), is amended as follows:

330.5 The following uses shall be permitted as a matter of right in an R-4 District:

....

(c) The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §§ ~~350.4 (c) and~~ 401.3 **and 403.2**

B. Chapter 4 (RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS) is amended as follows:

1. The table in § 401.3 is amended to read as follows:

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4 Conversion **of a building or structure** to **an** apartment house	900/apartment or bachelor apartment	None prescribed

2. The table in § 403.2 is amended to read as follows:

ZONE DISTRICT AND STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
R-4 ~~Conversion to multiple dwelling~~ **Conversion of a building or structure to an apartment house**	~~None prescribed~~ **Greater of 60% or the lot occupancy as of the date of conversion**

3. Add a new § 401.11 to read as follows:

401.11 **An apartment house in an R-4 District, whether converted from a building or structure pursuant to § 330.5 or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new.**

The Zoning Commission voted to **APPROVE** the proposed rulemaking at its public meeting on May 14, 2007, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull to approve).

The Zoning Commission, at its public meeting on July 9, 2007, **ADOPTED** this Order by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on SEP 14 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 06-47
Z.C. Case No. 06-47
(Text Amendment – 11 DCMR)
(Minimum Lot Area and Lot Occupancy Requirements for Apartment Houses in the R-4 Zone District)
July 9, 2007

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-03
Z.C. Case No. 07-03
(Text Amendments – 11 DCMR)
(Minimum lot dimensions in the R (Residential Districts)
July 9, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing and referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of an amendment to § 401.1 of the Zoning Regulations (Title 11 DCMR). The amendment clarifies that a building on a lot with less lot area or width than became permitted as of May 12, 1958 may not be expanded or replaced to house a new use, if that use requires more lot area or width than exists on the lot.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007, at 54 *DCR* 5331, for a 30-day notice and comment period.

The Commission took final action to adopt the amendment at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

On May 12, 1958, the Zoning Commission adopted the current version of the Zoning Regulations. Among the new provisions were regulations establishing minimum lot area and width requirements in residence zones. The Commission also adopted what is now § 401.3, which permits the construction of new buildings and the enlargement of existing buildings on lots that did not conform with these new requirements, as long as all other provisions of the Zoning Regulations were met. The Board of Zoning Adjustment recently held that § 401.3 not only permits the expansion and replacements of buildings on lots that did not comply with a specific lot or area requirement adopted in 1958, but also permits such construction to disregard all lot and area requirement, whenever adopted. The BZA's interpretation thus recognizes a wholesale exemption from lot control for the nonconforming lots, while conforming lots must

continue to abide by such limitations. The amendment adopted in this order is intended to remove the ambiguity that led to this result.

Description of Text Amendment

This rulemaking was initiated by the Office of Planning. The text amendment limits the exemption from complying with the lot area and width requirements of § 401.3 to just the nonconforming aspect of the lot that made it substandard in 1958. Thus, although a building existing as of May 1, 1958 may still be expanded or replaced by a new building, even though its lot is smaller or narrower than required as of that date, the new text provides that this may not occur if there will also be a change to a use that requires more lot area or width than the lot currently possesses.

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the goals of the District Elements of the Comprehensive Plan. No Comprehensive Plan sections deal specifically with residential lot size, but the change is consistent with the general themes of the Plan including the protection of residential character and the encouragement of compatible land uses. This text amendment would promote these goals of by confirming the existing lot size requirements for all types of structures and uses.

Public Hearing and Proposed Action

The Commission held a public hearing on April 5, 2007 and took proposed action on May 14, 2007 to approve the advertised text. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007 at 54 DCR 5331, for a 30-day notice and comment period.

At the time of it took final action, the Commission noted a letter received from the AppleTree Institute for Education Innovation requesting an exemption from the rule. Just days before the Zoning Commission took emergency action to establish new lot area and width requirements for charter schools, AppleTree filed an application for a building permit to expand a building to house that use. The application was denied because the lot did not meet the new requirements. AppleTree successfully appealed to the Board of Zoning Adjustment, arguing that the new requirements did not apply because its building was on a substandard lot and therefore could be expanded pursuant to the lot area exception granted under § 401.3. As this rulemaking makes clear, it was not the Commission's intent to apply the new lot area requirement only to schools on conforming lots. And though the issuance of this order might negate AppleTree's successful appeal, it does not preclude it from establishing the use. Rather, a charter school that cannot meet the lot or other area requirements in residence zones may seek a special exception. The BZA, through its public hearing process, is in a far better position to decide the affect of permitting AppleTree to establish a charter school on this lot than the Commission.

AppleTree submitted a second letter during the comment period contending that it should not "penalize" because the Zoning Administrator denied the building permit. The Commission decision to permit special exemption relief for properties with noncompliant lots was made to penalize such lot owners, but rather to offer a means to obtain a building permit without having to meet the stricter standards of a variance. Since the special exception option existed for AppleTree since the day the Commission took emergency action, so that any injury to AppleTree resulting from the need to now begin such proceedings is entirely self-inflicted.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendment would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency; however it recommended adding a reference to the replacement of an existing building since the § 401.1 exemption includes both the expansion *and* replacement of a building on a substandard lot.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007. No substantive changes were made to the advertised prepared text, except for the additional language suggested by the Office of the Attorney General. The Commission found that the proposed text amendment was in conformance with the original intent of § 401.1 and the lot size requirements of the regulations.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined lettering:

1. Amend § 401.1 to read as follows:

401.1 Except as provided in chapters 20 through 25 of this title **and in the second sentence of this subsection**, in the case of a building located, on May 12, 1958, on a lot with a lot area or lot width, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. **Notwithstanding the above, the lot area requirements of § 401.3 must be met**

when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

Vote of the Zoning Commission taken at its public meeting on May 14, 2007 to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jefferies, and Michael G. Turnbull to approve).

This order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2005 by a vote of **5-0-0** (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jefferies, and John G. Parsons to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on SEP 14 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-03
Z.C. Case No. 07-03
(Text Amendments – 11 DCMR)
(Minimum lot dimensions in the R (Residential Districts)

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-08
Z.C. Case No. 07-08
(Text Amendment - Temporary Ballpark Accessory Surface Parking Lots)
July 30, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to section 492 of the District Charter; hereby gives notice of the adoption of the following amendments to Chapters 1, 3, 6, 7, 9 and 21 of the Zoning Regulations (Title 11 DCMR). This text amendment would permit and regulate temporary surface parking spaces on specified lots near the future Washington Nationals ballpark (Ballpark).

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("*DCR*") on June 8, 2007 at 54 *DCR* 5633. Several comments were received and minor changes were made to the text, as will be explained below. The Commission took final action to adopt the amendments at a public meeting on July 30, 2007. This final rulemaking is effective upon publication in the *D.C. Register*.

Set Down Proceedings

The Office of Planning ("OP") initiated this rulemaking by filing a report with the Zoning Commission. The OP report requested text amendments to Chapters 3, 7, 9, and 21 of the Zoning Regulations to permit and regulate temporary (5 year maximum) surface parking spaces on specified squares to meet short term parking needs associated with the new Ballpark. OP further recommended that the Commission take emergency action to adopt the amendment, so that it could immediately take effect.

At its April 9, 2007 public meeting, the Commission declined to take emergency action, but agreed to set down the case for a public hearing with a shortened notice period of 30 days. The Commission further indicated that it would consider taking emergency action to adopt the amendment after the hearing is concluded.

Public Hearing and Proposed Action

The Commission held a public hearing on this case on May 21, 2007. At the public hearing, OP testified that the proposed text amendments would:

- Apply only to Squares 660, 665, 700, 701, 707, 708, 708E, 708S, 744S, 767, 768, 769, and 882.
- Allow matter of right surface parking lots on these squares until April 1, 2013 at the latest.
- Establish that, when not in use for Ballpark event parking purposes, the parking lots could be used for other parking purposes. OP further recommended that the time frame for which the parking spaces would be required to be available for patrons of events at the ballpark be 1.5 hours before an event and 3 hours after the event. The advertised text provided for a 3 hour period in both instances.
- Establish a cumulative matter of right maximum number of 3,775 surface parking spaces to be provided on these lots, derived from the D.C. Major League Baseball Park Transportation Management Plan prepared for the DC Sport and Entertainment Commission (DCSEC) as part of the Zoning Commission review of the ballpark design (ZC Case 06-22).
- Allow special exception approval by the Board of Zoning Adjustment (BZA) for additional parking spaces in excess of this maximum, in accordance with § 3104, subject to the applicant providing a traffic study assessing potential impacts.
- Establish provisions similar to those of §§ 2115 (size of parking spaces) and 2117 (access, maintenance, and operation) to regulate normal parking lot design and function related issues.

In a written report and in testimony at the public hearing, the District Department of Transportation ("DDOT") indicated support for the proposal on the basis of it being for temporary parking only. DDOT also described ongoing discussions regarding broader traffic and parking management for the Ballpark.

Advisory Neighborhood Commission ("ANC") 6D provided written and verbal testimony in opposition to the proposal, with the principal concerns being the potential for traffic through existing residential neighborhoods to access the parking spaces, and especially along P Street S.W., 4th Street S.W., and I Street S.W. The ANC also recommended implementation of a Traffic Management Plan, requiring that all parking lots meet stormwater management criteria, and placing a neighborhood recreation surcharge on the parking fees.

One resident and one representative of a property owner testified in opposition to the proposal.

Immediately following the public hearing on May 21, 2007, the Commission took emergency and proposed action to adopt the text amendment as advertised, with an amendment to require an approved traffic management plan ("TMP") for each surface parking lot approved by DDOT that would not direct traffic down P Street S.W., 4th Street S.W., or I Street S.W. The Commission indicated that DDOT could require that the TMP also include the impact of other proposed lots.

The Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on June 8, 2007 at 54 *DCR* 5633 for a 30-day notice and comment period. Unfortunately, the Notice of Proposed Rulemaking did not accurately capture the intent of the Commission, in that it (1) stated that the TMP must be for the Ballpark as a whole; and (2) provided that each lot is reserved exclusively for ballpark use is 3 hours before each event. After the transcript of the hearing became available, it was clear that the TMP was to be for each surface lot, unless DDOT required an aggregate TMP if more than one lot's application was being processed by the Department of Consumer and Regulatory Affairs, and that the lots were be reserved for exclusive use by attendees of a baseball game or public event (as described in § 1612.3 of the Zoning Regulations) one and a half (1.5) hours before each game or event. The text of the final rule was modified to reflect the Commission's intent when it took proposed action.

The Commission received comments from Councilmember Tommy Wells, Curt Harris, and Betsy Allman, all expressing concern that allowing construction of temporary parking lots on land currently known as U.S. Reservation 17, parcels B, C, and D (the "Canal Blocks Park Area" which is located within Squares 767, 768, and 769), would delay completion of the planned Canal Blocks Park.

The Commission also received comments from the Coalition for Smarter Growth, suggesting that the Commission require a renewal process for the temporary ballpark Certificates of Occupancy, require the lots comply with stormwater management best practices, require parking management to reduce the impact of the lots on the surrounding neighborhood, impose a parking free on all off-street parking, and require commercial parcels in the vicinity to share parking provided on-site with the Ballpark.

The proposed rulemaking also was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC by report dated July 12, 2007, commented that the proposed text amendment would not adversely affect the identified federal interests if the Zoning Commission made the following changes to the text amendment:

- Section 1603.3 of the Zoning Regulations is amended to include temporary surface parking lots as to maintain the 75 foot setback along the Anacostia Waterfront.

- Temporary surface lots are not permitted on the Canal Blocks Park Area.

- The final order for the text amendment clarifies that the existence of the parking lots beyond the April 1, 2013 time limit is not subject to Board of Zoning Adjustment Special Exception review.

- The Zoning Regulations require that the Board of Zoning Adjustment assess any request for exception to the 3,775 parking space cap for specific impacts to the Anacostia River and the Washington Nationals Baseball Stadium by adding language to Section 2110.2 of the proposed amendment.

Through a supplemental report dated July 18, 2007, OP also recommended that the Commission exclude the Canal Blocks Park Area from eligibility to become a temporary ballpark parking lot.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed July 30, 2007 public meeting, the Commission took final action to adopt the proposed text amendments, with modified text that adopted the recommendation of Councilmember Wells, OP, and NCPC to exclude the Canal Blocks Park Area from eligibility to become a temporary ballpark parking lot.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 3, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR (deleted language shown in ~~strikethrough~~ and new language shown in **bold** and underline).:

Title 11 (DCMR) is amended as follows:

A. Chapter 1 is amended by adding the following new definition:

199.1 **Ballpark – the building and use authorized by Zoning Commission Order No. 06-22.**

B. Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENTIAL DISTRICT USE REGULATIONS, § 350 is amended by adding the following new provision:

350.4 (i) **Temporary surface parking lot accessory to the Ballpark shall be permitted on Square 882 in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Square 882 shall be permitted as a special exception use if approved by the Board of Zoning Adjustment pursuant to § 2110.2.**

C. Chapter 6, MIXED USE (CR) DISTRICTS, § 601 is amended by adding the following new provision:

601.1 (dd) **Notwithstanding § 602.1, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares 660, 665, 700, 701, 882; and on Square 767, Lots 44 - 47; Square 768, Lots 19- 22; and Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District; in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares 660, 665, 700, 701, 882; and on Square 767, Lots 44 - 47; Square 768, Lots 19- 22; and Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.**

D. Chapter 6, MIXED USE (CR) DISTRICTS, § 602 is amended by adding the following new text:

602.1 (j) Parking lot**, except a temporary surface parking lot permitted pursuant to § 601.1(dd)**;

E. Chapter 7, COMMERCIAL (C) DISTRICTS, § 741 is amended by adding the following new provision:

741.5 (d) **Temporary surface parking lot accessory to the Ballpark shall be permitted on Square 769, Lot 21 and those portions of Lots 18 and 20 within the C-3-C District, in accordance with § 2110.1 (a). In the event that the cumulative parking limit established in § 2110.1 (b) is met, additional temporary surface parking spaces accessory to the Ballpark on Square 769, Lot 21 and those portions of Lots 18 and 20 within the C-3-C District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.**

F. Chapter 9, WATERFRONT (W) DISTRICTS, § 901 is amended by adding the following new provision:

901.1 (dd) Notwithstanding § 352.3, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares 707, 708, 708E, 708S, or 744S, in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares 707, 708, 708E, 708S, or 744S shall be permitted as a special exception in a W-2 District if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

G. Chapter 9, WATERFRONT (W) DISTRICTS, § 902 is amended by adding the following new text:

902.1 (l) Parking Lot:

(i) except a temporary surface parking lot permitted pursuant to § 901.1 (dd); or

(ii) other than as permitted by special exception in the W-0 District in §926;

H. Chapter 21, OFF STREET PARKING REQUIREMENTS, is amended by adding the following new section:

2110 Temporary Surface Parking Lots and Spaces for the Ballpark

2110.1 Permitted Use - Notwithstanding §§ 602.1 and 902.1 and not subject to any otherwise applicable proximity requirement, a temporary surface parking lot accessory to the Ballpark shall be permitted as a temporary use on Squares 660, 665, 700, 701, 707, 708, 708E, 708S, 744S, and 882; and Square 767, Lots 44 – 47; Square 768, Lots 19 – 22; and Square 769, Lots 18 - 21 ("the subject squares") in accordance with §§ 2110.3 through 2110.5 and the following provisions:

(a) The cumulative total of all temporary surface parking spaces for which a valid Building Permit has been issued pursuant to this section shall not exceed 3,775 parking spaces.

(b) Any certificate of occupancy issued pursuant to this subsection shall expire no later than April 1, 2013.

(c) The application for a building permit for matter of right construction shall include a detailed accounting demonstrating that the circumstances described in § 2110.2 do not apply.

(d) No certificates of occupancy for this use shall be issued until the District Department of Transportation has approved a traffic routing plan for the lot, which shall include the impact of other proposed lots if required by DDOT.

(e) The traffic routing plan described in § 2110.1(d) shall not direct traffic through I St., SW, P St., SW, or 4th St., SW.

2110.2 Special Exception - If and when valid building permits issued pursuant to § 2110.1 authorize an aggregate of 3,775 or more parking spaces, the construction and use of additional temporary spaces on any of the subject squares shall require approval of the Board of Zoning Adjustment pursuant to § 3104, and in accordance with §§ 2110.3 through 2110.5 and the following provisions:

(a) Any certificate of occupancy issued pursuant to this subsection shall expire no later than April 1, 2013; and

(b) The BZA application shall include a detailed accounting of the number and locations of temporary parking spaces provided pursuant to § 2110.1; and shall also include a traffic study assessing the impacts of the proposed additional parking spaces on local traffic patterns for referral to and comment by the District Department of Transportation.

2110.3 Any parking lot authorized shall be available for exclusive use of attendees at any baseball game or other public event described in §1612.3 for a time period extending from one and a half (1.5) hours prior to the scheduled start time of the event, to 3 hours after the event. At all other times, the parking lot may be used for:

(a) Parking on a general basis for "non-commercial motor vehicles" as that term is defined by 18 DCMR § 13.12.3 (c), except vehicles equipped to serve as temporary or permanent living quarters; or

(b) A seasonal or occasional market for produce, arts or crafts with non-permanent structures.

2110.4 No use, other than permitted in this section shall be conducted from or upon the premises, and no structure other than an attendant's shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the District in which the parking lot is located.

2110.5 A temporary surface parking lot provided in accordance with this section shall comply with the following standards:

(a) A full size automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives or aisles. A compact car parking space shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives or aisles, and shall be visibly marked as a "compact car" or "small car" parking space.

(b) Parking shall be designed so that no vehicle or any part thereof shall project over any lot line or building line. All parking areas and spaces shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicle without moving any other vehicle onto public space.

(c) When parking spaces are so arranged that an aisle is required for accessibility or maneuvering space between rows of 2 or more parking spaces, or between a row of 2 or more parking spaces and the perimeter of the area devoted to parking spaces, the aisle shall have a clear width of not less than twenty feet (20 ft.) or ninety degree (90°) angle parking, and not less than seventeen feet (17 ft.) for angle parking that is sixty degrees (60°) or less as measured from the center line of the aisle.

(d) Aisle widths serving compact car spaces exclusively shall have a clear width of not less than twenty feet (20 ft.) for ninety degree (90°) angle parking and not less than sixteen feet (16 ft.) for angle parking that is sixty degrees (60°) or less as measured from the center line of the aisle.

(e) Compliance with the requirements of §§ 2110.3 (c) and (d) is not required if the parking is managed during a specified twelve (12) hour peak period to be determined by the District Department of Transportation by employed attendants who park the vehicles using the parking facility; in which case a permanent sign shall be posted at each entrance in full view of the public that states:

"Attendant assisted parking is required by the District of Columbia Zoning Regulations." The sign shall also state the hours during which attendant parking is required. The sign shall have a white background, with black lettering that is no less than two inches (2 in.) in height.

(f) A driveway that provides access to required parking spaces shall:

(i) Have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line;

(ii) Be not less than twenty-five feet (25 ft.) from a street intersection as measured from the intersection of the curb line extended;

(iii) Be not less than twelve feet (12 ft.) in width if designed for one-way circulation or fourteen feet (14 ft.) if designed for two-way circulation; and

(iv) Be not more than twenty-five feet (25 ft.) in width.

(g) All parking spaces, including access aisles, driveways, and ramp areas shall be surfaced and maintained with an all-weather surface. In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel.

(h) The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot requiring Board approval.

(i) Any lighting used to illuminate a parking lot or its accessory building shall be so arranged that all direct rays of lighting are confined to the surface of the paved area devoted to parking.

Vote of the Zoning Commission taken at its public meeting on May 21, 2007 to **APPROVE** the proposed rulemaking by a vote of **3–0–2** (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to approve; John G. Parsons Gregory N. Jeffries not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 30, 2007 by a vote of **3–0–2** (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to adopt; John G. Parsons and Gregory N. Jeffries having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the D.C. Register; that is, on SEP 14 2007.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 07-08
Z.C. Case No. 07-08
(Text Amendment - Temporary Ballpark Accessory Surface Parking Lots)
July 30, 2007

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.